

California Natural Resources Agency  
Addendum to the Initial Statement of Reasons  
July 2, 2018  
California Code of Regulations, Title 14, Division 6, Chapter 3  
OAL Notice File No. Z-2018-0116-12

The California Natural Resources Agency (Agency) issues the following Addendum to the Initial Statement of Reasons (Addendum). This Addendum explains changes to the administrative rulemaking package (OAL Notice File No. Z-2018-0116-12) containing proposed updates to the Guidelines implementing the California Environmental Quality Act (Cal. Code of Regs., tit. 14, div. 3, § 15000 et seq.) (“CEQA Guidelines”).

## **UPDATE OF INITIAL STATEMENT OF REASONS**

### **DETAILED DESCRIPTION OF PROPOSED CHANGES**

The Agency updates the “Detailed Description of Proposed Changes” section by making a few amendments to that section. First, the Agency amends the section to include discussion of proposed Guidelines section 15064.4, as described in the January 2018 Notice of Proposed Rulemaking. Second, the Agency amends the “Detailed Description of Proposed Changes” section to include proposed changes to Appendix N of the CEQA Guidelines.

The Agency updates the “Detailed Description of Proposed Changes” section as follows:

#### **15064.4 DETERMINING THE SIGNIFICANCE OF IMPACTS FROM GREENHOUSE GAS EMISSIONS**

##### **Specific Purposes of Amendment**

The Agency proposes to amend several portions of existing section 15064.4, as described below. The Agency added section 15064.4 to the CEQA Guidelines in 2010 as part of a package of amendments addressing greenhouse gas emissions, as directed by Senate Bill 97 (Dutton, 2007). The purpose of section 15064.4 is to assist lead agencies in determining the significance of a project’s greenhouse gas emissions on the environment.

##### **Subdivision (a)**

The first change that the Agency proposes is in subdivision (a) of section 15064.4. Subdivision (a) currently states that lead agencies “should” make a good faith effort to estimate or describe a project’s greenhouse gas emissions. The Agency proposes to replace the word “should” with the word “shall” to clarify that evaluation of a project’s greenhouse gas emissions is a

requirement of CEQA. (See Pub. Resources Code, § 21083.05; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 90-91 [“climate-change impacts are significant environmental impacts requiring analysis under CEQA”]; *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497 (SANDAG); see also CEQA Guidelines, § 15005 [defining the terms “should” and “shall”].) This clarification is necessary because some agencies continue to provide information regarding climate change in their projects’ environmental documents without actually determining whether the project’s greenhouse gas emissions are significant. A similar clarifying change is proposed in subdivision (b), replacing the word “assessing” with the word “determining.” CEQA requires a lead agency to determine the significance of all environmental impacts. (Pub. Resources Code, § 21082.2; CEQA Guidelines, § 15064.)

#### Subdivisions (b)

The Agency proposes to change subdivision (b) of section 15064.4 by adding four sentences. That subdivision currently provides a list of factors that a lead agency should use when evaluating a project’s greenhouse gas emissions. First, the Agency proposes to add a sentence clarifying that the focus of the lead agency’s analysis should be on the project’s effect on climate change. This clarification is necessary to avoid an incorrect focus on the quantity of emissions, and in particular how that quantity of emissions compares to statewide or global emissions. (See, e.g., *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 842 [invalidating an EIR that based its significance determination partly on comparing the project’s emissions to statewide emissions]; *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 228 [invalidating an EIR because the lead agency did not provide sufficient evidence that “the Scoping Plan’s statewide measure of emissions reduction can also serve as the criterion for an individual land use project”]; see also *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160-198-200 [upholding agency’s greenhouse gas analysis that did not quantify emissions].) The Agency proposes to further clarify that lead agencies should consider the reasonably foreseeable incremental contribution of the project’s emissions to the effects of climate change. In doing that analysis, agencies should avoid in speculation. (CEQA Guidelines, §§ 15144 [“an agency must use its best efforts to find out and disclose all that it reasonably can”], 15145 [“[i]f, after a thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact”].)

In the second sentence of subdivision (b), the Agency proposes to clarify that a project’s incremental contribution may be cumulatively considerable even if it appears relatively small compared to statewide, national or global emissions. This proposed change is consistent with existing case law discussing cumulative impacts and the applicable portions of the Public Resources Code. The impacts analysis of greenhouse gas emissions is global in nature; “the fact that carbon dioxide and other greenhouse gases, once released into the atmosphere, are not contained in the local area of their emission means that the impacts to be evaluated are also

global rather than local.” (*Center for Biological Diversity v. Dept. of Fish & Wildlife, supra*, 62 Cal.4th at p. 220; *SANDAG, supra*, 3 Cal.5th at p. 512.) “[A]n individual project’s emissions will most likely not have any appreciable impact on the global problem by themselves, but they will contribute to the significant cumulative impact caused by greenhouse gas emissions from other sources around the globe.” (*Center for Biological Diversity v. Dept. of Fish & Wildlife, supra*, 62 Cal.4th at p. 219; *SANDAG, supra*, 3 Cal.5th at p. 512.) Thus, the primary question to be answered in the impacts analysis is “whether the project’s incremental addition of greenhouse gases is ‘cumulatively considerable’ in light of the global problem, and thus significant.” (*Ibid.*) Depending on the proposed project, the project’s incremental contribution of greenhouse gases, even if minor, may be cumulatively considerable. (See *SANDAG, supra*, 3 Cal.5th at p. 515 [“The fact that a regional plan’s contribution to reducing greenhouse gas emissions is likely to be small on a statewide level is not necessarily a basis for concluding that its impact will be insignificant in the context of a statewide goal.”].)

In the third sentence of subdivision (b), the Agency proposes to add that lead agencies should consider a timeframe for the analysis that is appropriate for the project. CEQA requires agencies to consider a project’s direct and indirect significant impacts on the environment, “giving due consideration to both the short-term and long-term effects.” (CEQA Guidelines, § 15126.2, subd. (a); see Pub. Resources Code, § 21001, subd. (d) [state policy “[e]nsure[s] that the long-term protection of the environment . . . shall be the guiding criterion in public decisions”]; § 21001, subd. (g) [state policy requires “governmental agencies at all levels to consider . . . long-term benefits and costs, in addition to short-term benefits and costs . . . .”]; § 21083 [requiring preparation of an EIR for a project that “has the potential to . . . achieve short-term, to the disadvantage of long-term, environmental goals”].) In some cases, it would be appropriate for agencies to consider a project’s long-term greenhouse gas impacts, such as for projects with long time horizons for implementation.

In the fourth sentence of subdivision (b), the Agency proposes to clarify that an agency’s analysis must reasonably reflect evolving scientific knowledge and state regulatory schemes. This clarification acknowledges *SANDAG, supra*, 3 Cal.5th 497. In that case, the California Supreme Court addressed the adequacy of an EIR prepared for a long-range regional transportation plan. In addressing the plan’s greenhouse gas emissions, the Court held the lead agency did not abuse its discretion by declining to analyze the consistency of projected long-term greenhouse gas emissions with the goals of an executive order declaring an emissions reduction goals for 2050. But the Court further stated: “we do not hold that the analysis of greenhouse gas impacts employed by SANDAG in this case will necessarily be sufficient going forward. CEQA requires public agencies like SANDAG to ensure that such analysis stay in step with evolving scientific knowledge and state regulatory schemes.” (*Id.* at p. 504; see *id.* at p. 519.)

The agency further proposes to change subdivision (b)(3) of section 15064.4. That subdivision currently discusses the consideration of whether a project complies with a plan or regulation to

reduce greenhouse gas emissions. The Agency proposes to clarify the first sentence of subdivision (b)(3) by adding a reference to CEQA Guidelines section 15183.5, which governs the contents of an agency's plan for the reduction of greenhouse gas emissions. This addition is needed to clarify that lead agencies may rely on plans prepared pursuant to section 15183.5 in evaluating a project's greenhouse gas emissions. This proposed change is consistent with the Agency's Final Statement of Reasons for the addition of section 15064.4, which states that "proposed section 15064.4 is intended to be read in conjunction with . . . proposed section 15183.5. Those sections each indicate that local and regional plans may be developed to reduce GHG emissions." (Natural Resources Agency, Final Statement of Reasons (December 2009), p. 27; see *Mission Bay Alliance v. Office of Community Investment & Infrastructure*, *supra*, 6 Cal.App.5th at pp. 201-202 [upholding agency's reliance on greenhouse gas strategy].)

Finally, the Agency proposes to add another sentence to subdivision (b)(3). The Agency proposes to clarify that in determining the significance of a project's impacts, the lead agency may consider a project's consistency with the State's long-term climate goals or strategies, provided that substantial evidence supports the agency's analysis of how those goals or strategies address the project's incremental contribution to climate change and its conclusion that the project's incremental contribution is consistent with those plans, goals, or strategies. This clarification implements the California Supreme Court's decision in *Center for Biological Diversity v. Dept. of Fish & Wildlife*, *supra*, 62 Cal.4th 204. In that case, the EIR used consistency with Assembly Bill 32's greenhouse gas emissions reduction goals as a significance threshold. The EIR also discussed the California Air Resources Board's Scoping Plan and "business as usual" (BAU) scenario, and found that the project would emit less than the BAU scenario. The Court concluded that the agency used a permissible significance threshold, but failed to support with substantial evidence the finding that the project's greenhouse gas emissions would not have a cumulatively significant impact on the environment. (*Id.* at pp. 218-222, 225.) As the Court stated, the lead agency failed to establish through substantial evidence "a quantitative equivalence between the Scoping Plan's statewide comparison and the EIR's own project-level comparison . . . ." (*Id.* at p. 227.)

#### Subdivision (c)

The Agency proposes to add subdivision (c) to address the use of models and methodologies. The Agency proposes to clarify that the lead agency has discretion to select the model or methodology it considers most appropriate to enable decision makers to intelligently take into account the project's incremental contribution to climate change. Most of the text in proposed subdivision (c) is taken from subdivision (a)(1) of the current section 15064.4. Additionally, the proposed clarification regarding the agency's discretion in selecting an appropriate model or methodology is consistent with CEQA Guidelines section 15151, which addresses the standards for adequacy of EIRs. (*Ibid.* ["An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make decision which intelligently takes account of environmental consequences."].) Models play a role not only in

estimating a project's greenhouse gas emissions, but also in determining baseline emissions and applying thresholds. Moving the text to subdivision (c) clarifies that the guidance on models applies to the entire section. However, when an agency relies completely on a single quantitative method, it must research and document the quantitative parameters essential to that method. (*Center for Biological Diversity v. Dept. of Fish & Wildlife*, *supra*, 62 Cal.4th at p. 228.)

### **Necessity**

The proposed amendments to CEQA Guidelines section 15064.4 is necessary to reflect recent case law involving climate change analysis, including decisions from the California Supreme Court. (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497; *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70.) In addition to proposing necessary updates to this section, the Agency intends these changes to result in analyses that help decisionmakers and the public to meaningfully understand a project's potential contribution to climate change.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with case law. Additionally, the proposed action adds no new substantive requirements. The Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses as the change is a clarifying change only and would be implementing existing case law.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing case law. Because the proposed action does not add new substantive requirements, it will not result in an adverse impact on businesses in California.

## **APPENDIX N. INFILL ENVIRONMENTAL CHECKLIST FORM**

### **Specific Purposes of Amendment**

The Agency amends the Initial Statement of Reasons to include minor changes to Appendix N, which relates specifically to proposed infill projects. Existing Appendix N provides a sample checklist that is intended to assist lead agencies in assessing infill projects according to the procedures in Public Resources Code section 21094.5. The Agency added Appendix N in 2013 when it added section 15183.3. In creating Appendix N, the Agency patterned the sample checklist based on Appendix G, which also provides a sample environmental checklist that may be used by lead agencies in determining whether a project may cause a significant impact on the environment.

The purpose of the changes are to make Appendix N consistent with the proposed changes to Appendix G being considered in this regulatory package, as well as changes that were made pursuant to AB 52 (Gatto, 2014).

For a detailed discussion of the Agency's proposed changes to Appendix G, please see the January 2018, Initial Statement of Reasons, and the proposed changes to the regulatory text in the June 2018 Notice of Public Availability of Modifications to Text of Proposed Regulation and Addendum to the Initial Statement of Reasons.

### **Necessity**

These proposed changes are necessary to make it simpler for lead agencies. These additions are also necessary to ensure that the CEQA Guidelines best serve their function of providing comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Agency's determination that the proposed action is necessary to update the CEQA Guidelines to clarify existing law. Additionally, the proposed action adds no new substantive requirements. The Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses as the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add substantive requirements, it will not result in an adverse impact on businesses in

California. Appendix N, like Appendix G, advises that its environmental checklist is only a sample form that can be tailored to address local conditions and project characteristics.

## **STANDARDIZED REGULATORY IMPACT ASSESSMENT: CEQA GUIDELINES UPDATES**

The Agency updates to the following section of the Standardized Regulatory Impact Assessment supporting the Agency's rulemaking package.

### **Attachment 2: Bibliography of Materials Supporting the Proposed CEQA Guideline on Transportation Impacts**

Attachment 2 is updated as follows:

#### **Additional Resources:**

Ahangari, H., et al. (2017) *Automobile-dependency as a barrier to vision zero, evidence from the state in the USA*. Accident Analysis and Prevention 107, pp. 77-85.

California Department of Housing and Community Development. (2018) California's Housing Future: Challenges and Opportunities Final Statewide Housing Assessment 2025. Available at: [http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA\\_Final\\_Combined.pdf](http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf)

Center for Neighborhood Technology. (2010) Penny Wise, Pound Fuelish. Available at: [https://www.cnt.org/sites/default/files/publications/CNT\\_pwpf.pdf](https://www.cnt.org/sites/default/files/publications/CNT_pwpf.pdf)

Center for Neighborhood Technology and the Center for Housing Policy. (2012) Losing Ground: The Struggle of Moderate-Income Households to Afford the Rising Costs of Housing and Transportation. Available at: [https://www.cnt.org/sites/default/files/publications/CNT\\_LosingGround.pdf](https://www.cnt.org/sites/default/files/publications/CNT_LosingGround.pdf)

Governor's Office of Planning and Research. (2017) General Plan Guidelines: 2017 Update, Appendix B, Transportation Safety.

Redman/Johnston Associates, Ltd. (1998) Who Pays for Sprawl? The Economic, Social, and Environmental Impacts of Sprawl Development.

Smart Growth America. (2013) Building Better Budgets, A National Examination of the Fiscal Benefits of Smart Growth Development.

Tal, G., et al. (2013) Policy Brief on the Impacts of Transit Access (Distance to Transit) Based on a Review of the Empirical Literature. Available at: [https://www.arb.ca.gov/cc/sb375/policies/transitaccess/transit\\_access\\_brief120313.pdf](https://www.arb.ca.gov/cc/sb375/policies/transitaccess/transit_access_brief120313.pdf)

Tal, G., et al. (2013) Technical Background Document on the Impacts of Transit Access (Distance to Transit) Based on a Review of the Empirical Literature. Available at:  
[https://www.arb.ca.gov/cc/sb375/policies/transitaccess/transit\\_access\\_bkgd120313.pdf](https://www.arb.ca.gov/cc/sb375/policies/transitaccess/transit_access_bkgd120313.pdf)

U.C. Berkeley, Turner Center for Housing Innovation and Center for Law, Energy and the Environment. (2016) *Right Type, Right Place, Assessing the Environmental and Economic Impacts of Infill Residential Development Through 2030*.